IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.1073 OF 2005
WITH
APPEAL FROM ORDER NOS.1074 TO 1976 OF 2005

A.O. No. 1073/05 :

Mr. Navratanji Kothari. ...Appellant.
Vs.
M/s. Shreejee Builders & Ors. ...Respondents.
....
Mr. Shreepad Murthy with Mr. N. M. Shah for the Appellant.
Mr. R.J. Majra i/b. Wadia Ghandy for Respondent No.1.
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A.O. No. 1074/05 :

Mr. Hukumchand H. Jain. ...Appellant.
Vs.
M/s. Shreejee Builders & Ors. ...Respondents.
....
Mr. Shreepad Murthy with Mr. N. M. Shah for the Appellant.
Mr. R.J. Majra i/b. Wadia Ghandy for Respondent No.1.
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A.O. No. 1075/05 :

Mr. Uttamchand Jain. ...Appellant.
Vs.
M/s. Shreejee Builders & Ors. ...Respondents.
....
Mr. Shreepad Murthy with Mr. N. M. Shah for the Appellant.
Mr. R.J. Majra i/b. Wadia Ghandy for Respondent No.1.
.....

A.O. No. 1076/05 :

Panchratna Co-operative
Housing Society Ltd. ...Appellant.

Vs.

M/s. Shreejee Builders & Ors. ...Respondents.

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Mr. Shreepad Murthy with Mr. N. M. Shah for the Appellant.
Mr. R.J. Majra i/b. Wadia Ghandy for Respondent No.1.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 28, 2005.

P.C.:

By an order dated 22nd March 1990 in Notice of Motion No.5945 of 1987, the Original Defendants before the City Civil Court were restrained by an order of injunction from obstructing and disturbing the possession of the Plaintiff in respect of the suit premises. On 24th June 2002, a further order was passed by the Learned Trial Judge on a Motion taken out by the Plaintiff to restrain the original Third Defendant from parking Cars in the suit property and from disturbing the possession of the Plaintiff. Action was sought against the Third Defendant which is a Co-operative Society for willfully flouting the previous order of injunction passed by the Trial Court on 22nd March 1990. When a subsequent

motion, Notice of Motion No. 1824 of 2001 came up for hearing before the Trial Judge, it emerged from the record that the Co-operative Society (the Third Defendant) had issued a circular letter informing all its members that work would be started shortly on the suit property for the development of a car parking facility which would be provided on a monthly rental basis. The Co-operative Society admitted before the Learned Judge that such a circular had in fact, been issued on 26th March 2001, but it was stated that the circular was issued in ignorance of the order of the Court and an unconditional apology was tendered before the Learned Trial Judge. In the circumstances, the City Civil Court declined to pursue contempt proceedings but granted relief restraining the parking of cars in the suit premises. It is the case of the Plaintiff that despite the subsequent order of injunction dated 22nd June 2002, the possession of the plaintiff was sought to be disturbed and cars were parked in the premises. The contention of the plaintiff has been found to have been duly established by the Trial Court in its impugned order dated 16th June 2004. The Learned Trial Judge has noted that in spite of successive orders of injunction, the Co-operative Society which was the Third Defendant, had (i) allowed parking of cars; (ii) permitted the

carrying on of a business of water containers; and (iii) allowed the erection of huts by labourers in the suit premises; in breach of the injunction.

The finding of the Learned Trial Judge is amply borne out by the numerous letters written on behalf of the Plaintiff after the order of injunction dated 24th June 2004 and by the replies thereto. On 13th September 2002, the Advocate for the Plaintiff complained that despite the order of injunction, parking of cars was permitted by the Co-operative Housing Society in willful breach of the order. Once again on 10th January 2003, a recording letter was addressed in regard to the breach of the order of injunction stating that the order of injunction had been violated despite the fact that on 8th August 2002 a copy of the order had been furnished to the Co-operative Society. On 27th January 2003, the Co-operative Society addressed a reply through its Advocate and stated that since major repairs were being carried out to the building, there was a possibility of some people parking cars in the suit premises. The Society stated that it had issued instructions that no car should be parked in violation of the order of the Court. Letters were addressed on behalf of the Plaintiff on 5th February

2003, 28th Mach 2003 and 1st April 2003. The last of the letters stated that the society had permitted the business of storing water containers in the suit property and that huts were built for labourers engaged in the repair work on the property belonging to the Society. A statement is recorded that the property was under the lock and key of security personnel of the Co-operative Society and a violation was, therefore possible only with the help of the society.

In the earlier order, the Learned Trial Judge noted that the Co-operative Society had issued a circular regarding the parking of the cars despite the order of injunction passed on 22nd March 1990. The Trial Court, however, did not consider it appropriate to exercise the contempt jurisdiction at that stage. In the impugned order dated 16th June 2004, the Learned Trial Judge has noted that there is a breach of the orders dated 22nd March 2002 and 24th June 2002. The parking of cars of members of the Third Defendant Society has continued; huts have been allowed to be erected by labourers who were conducting repairs to the premises of the Society and a business of water containers was also carried on. In these circumstances, the Learned Trial Judge was justified in taking action under Order 39 Rule 2A of the Code

of Civil Procedure, 1908. There is no merit in the appeals which are accordingly dismissed.

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